

AMENDED IN SENATE APRIL 9, 2007

SENATE BILL

No. 39

Introduced by Senator Migden

December 12, 2006

An act to amend Section 827 of, *and to add Section 10850.4 to*, the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

SB 39, as amended, Migden. Dependent children and wards of the juvenile court: case file confidentiality.

~~Existing~~

~~(1) Existing law requires the case file of a dependent child or ward of the juvenile court to be kept confidential, except as specified. Existing law permits the juvenile case files that pertain to a deceased child who was within the jurisdiction of the juvenile court, as provided, to be released to the public after a petition has been filed and interested parties have been afforded an opportunity to file an objection, subject to certain limitations.~~

~~This bill would make technical, nonsubstantive changes to these case file confidentiality provisions.~~

~~This bill would revise these provisions and require that juvenile case files relating to a dependent child or a ward of the juvenile court who died or suffered a near death injury as a result of child abuse or neglect shall be released to the public, subject to certain limitations set forth in the bill.~~

~~(2) Existing law provides for a system of child welfare services administered by each county, with oversight by the State Department of Social Services.~~

This bill would require a custodian of juvenile case file records within a county welfare department to disclose, within 10 days from a request or upon the disposition of an investigation, whichever occurs last, records of a juvenile case file, subject to the redaction of certain identifying personal information in any substantiated case, as defined, of child abuse or neglect that results in the death or near death of a child.

The bill would also require all county welfare departments to notify the department, as provided, of all child fatalities or near fatalities that occurred within its jurisdiction that were the result of child abuse or neglect, and would require the department to prepare and release to the public a report and a summary relating to the information provided by the counties.

By increasing the duties of local agencies, this bill would create a state-mandated local program.

(3)The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. *The Legislature finds and declares all of the*
- 2 *following:*
- 3 (a) *During 2004, approximately 140 children in California were*
- 4 *officially reported as having died as a result of abuse or neglect.*
- 5 *The official reports are believed to significantly underreport the*
- 6 *actual number of child abuse victims who suffered fatal injuries.*
- 7 *No data on the number of children who suffer near fatal injuries*
- 8 *as a result of abuse or neglect are reported.*
- 9 (b) *Providing public access to child case files in cases where a*
- 10 *child fatality or near fatality occurs as a result of abuse or neglect*
- 11 *will promote public discourse and examination of the*
- 12 *circumstances that led to the fatality or near fatality, thereby*

1 *promoting the development of child protection policies, procedures,*
2 *practices, and strategies that will reduce or avoid future incidents*
3 *of child abuse.*

4 *(c) The current procedures for accessing information about a*
5 *child's death from abuse or neglect are costly and, at times, result*
6 *in lengthy delays in the release of this information, fail to provide*
7 *adequate guidance for what information should and should not*
8 *be disclosed, and permit significant variation from one jurisdiction*
9 *to another in the nature and extent of the information released.*

10 *(d) The federal Child Abuse Prevention and Treatment Act*
11 *(CAPTA) (42 U.S.C. 5106a) provides grants to states whose laws*
12 *allow public disclosure of findings and information in cases of*
13 *child abuse or neglect that resulted in a child fatality or near*
14 *fatality. CAPTA disclosures are an explicit exception to the general*
15 *confidentiality laws and are intended to ensure that the public has*
16 *access to information in order to prevent tragedies from recurring.*
17 *California receives funds under CAPTA that are used to support*
18 *its child protection system, and the state is therefore obligated to*
19 *comply with the public disclosure provisions of CAPTA.*

20 *(e) It is the intent of the Legislature, by adopting this act, to*
21 *maximize public access to juvenile case files in cases where a child*
22 *fatality or near fatality occurs as a result of child abuse or neglect,*
23 *by removing legal impediments to public agency disclosure of*
24 *these records while also ensuring that basic privacy protections*
25 *are afforded to surviving children throughout the state.*

26 **SECTION 1.**

27 **SEC. 2.** Section 827 of the Welfare and Institutions Code is
28 amended to read:

29 827. (a) (1) Except as provided in Section 828, a case file
30 may be inspected only by the following:

31 (A) Court personnel.

32 (B) The district attorney, a city attorney, or city prosecutor
33 authorized to prosecute criminal or juvenile cases under state law.

34 (C) The minor who is the subject of the proceeding.

35 (D) The minor's parents or guardian.

36 (E) The attorneys for the parties, judges, referees, other hearing
37 officers, probation officers, and law enforcement officers who are
38 actively participating in criminal or juvenile proceedings involving
39 the minor.

1 (F) The superintendent or designee of the school district where
2 the minor is enrolled or attending school.

3 (G) Members of the child protective agencies as defined in
4 Section 11165.9 of the Penal Code.

5 (H) The State Department of Social Services, to carry out its
6 duties pursuant to Division 9 (commencing with Section 10000),
7 and Part 5 (commencing with Section 7900) of Division 12, of the
8 Family Code to oversee and monitor county child welfare agencies,
9 children in foster care or receiving foster care assistance, ~~and~~
10 out-of-state placements, *and the public disclosure of case files*
11 *made pursuant to Section 10850.4.*

12 (I) Authorized legal staff or special investigators who are peace
13 officers who are employed by, or who are authorized
14 representatives of, the State Department of Social Services, as
15 necessary to the performance of their duties to inspect, license,
16 and investigate community care facilities, and to ensure that the
17 standards of care and services provided in those facilities are
18 adequate and appropriate and to ascertain compliance with the
19 rules and regulations to which the facilities are subject. The
20 confidential information shall remain confidential except for
21 purposes of inspection, licensing, or investigation pursuant to
22 Chapter 3 (commencing with Section 1500) and Chapter 3.4
23 (commencing with Section 1596.70) of Division 2 of the Health
24 and Safety Code, or a criminal, civil, or administrative proceeding
25 in relation thereto. The confidential information may be used by
26 the State Department of Social Services in a criminal, civil, or
27 administrative proceeding. The confidential information shall be
28 available only to the judge or hearing officer and to the parties to
29 the case. Names that are confidential shall be listed in attachments
30 separate to the general pleadings. The confidential information
31 shall be sealed after the conclusion of the criminal, civil, or
32 administrative hearings, and may not subsequently be released
33 except in accordance with this subdivision. If the confidential
34 information does not result in a criminal, civil, or administrative
35 proceeding, it shall be sealed after the State Department of Social
36 Services decides that no further action will be taken in the matter
37 of suspected licensing violations. Except as otherwise provided in
38 this subdivision, confidential information in the possession of the
39 State Department of Social Services may not contain the name of
40 the minor.

1 (J) Members of children’s multidisciplinary teams, persons, or
2 agencies providing treatment or supervision of the minor.

3 (K) A judge, commissioner, or other hearing officer assigned
4 to a family law case with issues concerning custody or visitation,
5 or both, involving the minor, and the following persons, if actively
6 participating in the family law case: a family court mediator
7 assigned to a case involving the minor pursuant to Article 1
8 (commencing with Section 3160) of Chapter 11 of Part 2 of
9 Division 8 of the Family Code, a court-appointed evaluator or a
10 person conducting a court-connected child custody evaluation,
11 investigation, or assessment pursuant to Section 3111 or 3118 of
12 the Family Code, and counsel appointed for the minor in the family
13 law case pursuant to Section 3150 of the Family Code. Prior to
14 allowing counsel appointed for the minor in the family law case
15 to inspect the file, the court clerk may require counsel to provide
16 a certified copy of the court order appointing him or her as the
17 minor’s counsel.

18 (L) A court-appointed investigator who is actively participating
19 in a guardianship case involving a minor pursuant to Part 2
20 (commencing with Section 1500) of Division 4 of the Probate
21 Code and acting within the scope of his or her duties in that case.

22 (M) A local child support agency for the purpose of establishing
23 paternity and establishing and enforcing child support orders.

24 (N) Juvenile justice commissions as established under Section
25 225. The confidentiality provisions of Section 10850 shall apply
26 to a juvenile justice commission and its members.

27 (O) Any other person who may be designated by court order of
28 the judge of the juvenile court upon filing a petition.

29 ~~(2) Notwithstanding any other law and subject to subparagraph
30 (A) of paragraph (3), juvenile case files, except those relating to
31 matters within the jurisdiction of the court pursuant to Section 601
32 or 602, that pertain to a deceased child who was within the
33 jurisdiction of the juvenile court pursuant to Section 300, shall be
34 released to the public pursuant to an order by the juvenile court
35 after a petition has been filed and interested parties have been
36 afforded an opportunity to file an objection. Any information
37 relating to another child or that could identify another child, except
38 for information about the deceased, shall be redacted from the
39 juvenile case file prior to release, unless a specific order is made
40 by the juvenile court to the contrary. Except as provided in this~~

1 paragraph, the presiding judge of the juvenile court may issue an
2 order prohibiting or limiting access to the juvenile case file, or any
3 portion thereof, of a deceased child only upon a showing that
4 release of the juvenile case file or any portion thereof is detrimental
5 to the safety, protection, or physical or emotional well-being of
6 another child who is directly or indirectly connected to the juvenile
7 case that is the subject of the petition.

8 (2) (A) *Notwithstanding any other provision of law, juvenile*
9 *case files relating to a child who was subject to the jurisdiction of*
10 *the juvenile court pursuant to Section 300, and who died or suffered*
11 *a near death injury as a result of child abuse or neglect, shall be*
12 *released by the custodian of the records to the public pursuant to*
13 *Section 10850.4.*

14 (B) (i) *Any person who objects to the withholding or redaction*
15 *of information, made pursuant to subdivision (d) of Section*
16 *10850.4, of the juvenile case file may petition the juvenile court*
17 *for the release of the withheld or redacted information. Within 10*
18 *days of the filing of the request for further information pursuant*
19 *to this clause, the juvenile court shall serve upon the attorney for*
20 *the deceased child or the child who suffered a near fatal injury a*
21 *copy of the request. The notice shall also direct that counsel file*
22 *objections, if any, within 10 days of receipt of the notice. A copy*
23 *of the objections shall be served on the requesting party who shall*
24 *have a right to file a response to the objections within five days*
25 *after service. The juvenile court shall set the matter for hearing*
26 *no more than 45 days from the date of the request.*

27 (ii) *In the absence of a showing by clear and convincing*
28 *evidence supporting the reasonable suspicion that the release of*
29 *the additional information withheld or redacted from a juvenile*
30 *case file pursuant to subdivision (d) of Section 10850.4 will*
31 *endanger or result in harm to the emotional or physical well-being*
32 *of a child or any other caretaker or other third party who is directly*
33 *or indirectly connected to the juvenile case file the court shall*
34 *order the requested information to be released. This showing shall*
35 *include, but need not be limited to, a showing as to why redaction*
36 *of personally identifiable information, made pursuant to*
37 *subdivision (d) of Section 10850.4, is not sufficient to avoid harm.*
38 *If the harm to the child can be resolved by the redaction of*
39 *personally identifying information, the court shall order the*
40 *redacted documents to be released.*

1 (3) Access to juvenile case files pertaining to matters within the
2 jurisdiction of the juvenile court pursuant to Section 300 shall be
3 limited as follows:

4 (A) If a juvenile case file, or any portion thereof, is privileged
5 or confidential pursuant to any other state law or federal law or
6 regulation, the requirements of that state law or federal law or
7 regulation prohibiting or limiting release of the juvenile case file
8 or any portions thereof shall prevail. Unless a person is listed in
9 subparagraphs (A) to (N), inclusive, of paragraph (1) and is entitled
10 to access under the other state law or federal law or regulation
11 without a court order, all those seeking access, pursuant to other
12 authorization, to portions of, or information relating to the contents
13 of, juvenile case files protected under another state law or federal
14 law or regulation, shall petition the juvenile court. The juvenile
15 court may only release the portion of, or information relating to
16 the contents of, juvenile case files protected by another state law
17 or federal law or regulation if disclosure is not detrimental to the
18 safety, protection, or physical or emotional well-being of a child
19 who is directly or indirectly connected to the juvenile case that is
20 the subject of the petition. This paragraph shall not be construed
21 to limit the ability of the juvenile court to carry out its duties in
22 conducting juvenile court proceedings.

23 (B) Prior to the release of the juvenile case file or any portion
24 thereof, the court shall afford due process, including a notice of
25 and an opportunity to file an objection to the release of the record
26 or report to all interested parties.

27 (4) A juvenile case file, any portion thereof, and information
28 relating to the content of the juvenile case file, may not be
29 disseminated by the receiving agencies to any persons or agencies,
30 other than those persons or agencies authorized to receive
31 documents pursuant to this section. Further, a juvenile case file,
32 any portion thereof, and information relating to the content of the
33 juvenile case file, may not be made as an attachment to any other
34 documents without the prior approval of the presiding judge of the
35 juvenile court, unless it is used in connection with and in the course
36 of a criminal investigation or a proceeding brought to declare a
37 person a dependent child or ward of the juvenile court.

38 (b) (1) While the Legislature reaffirms its belief that juvenile
39 court records, in general, should be confidential, it is the intent of
40 the Legislature in enacting this subdivision to provide for a limited

1 exception to juvenile court record confidentiality to promote more
2 effective communication among juvenile courts, family courts,
3 law enforcement agencies, and schools to ensure the rehabilitation
4 of juvenile criminal offenders as well as to lessen the potential for
5 drug use, violence, other forms of delinquency, and child abuse.

6 (2) Notwithstanding subdivision (a), written notice that a minor
7 enrolled in a public school, kindergarten to grade 12, inclusive,
8 has been found by a court of competent jurisdiction to have
9 committed any felony or any misdemeanor involving curfew,
10 gambling, alcohol, drugs, tobacco products, carrying of weapons,
11 a sex offense listed in Section 290 of the Penal Code, assault or
12 battery, larceny, vandalism, or graffiti shall be provided by the
13 court, within seven days, to the superintendent of the school district
14 of attendance. Written notice shall include only the offense found
15 to have been committed by the minor and the disposition of the
16 minor's case. This notice shall be expeditiously transmitted by the
17 district superintendent to the principal at the school of attendance.
18 The principal shall expeditiously disseminate the information to
19 those counselors directly supervising or reporting on the behavior
20 or progress of the minor. In addition, the principal shall disseminate
21 the information to any teacher or administrator directly supervising
22 or reporting on the behavior or progress of the minor whom the
23 principal believes needs the information to work with the pupil in
24 an appropriate fashion, to avoid being needlessly vulnerable or to
25 protect other persons from needless vulnerability.

26 Any information received by a teacher, counselor, or
27 administrator under this subdivision shall be received in confidence
28 for the limited purpose of rehabilitating the minor and protecting
29 students and staff, and shall not be further disseminated by the
30 teacher, counselor, or administrator, except insofar as
31 communication with the juvenile, his or her parents or guardians,
32 law enforcement personnel, and the juvenile's probation officer
33 is necessary to effectuate the juvenile's rehabilitation or to protect
34 students and staff.

35 An intentional violation of the confidentiality provisions of this
36 paragraph is a misdemeanor punishable by a fine not to exceed
37 five hundred dollars (\$500).

38 (3) If a minor is removed from public school as a result of the
39 court's finding described in subdivision (b), the superintendent
40 shall maintain the information in a confidential file and shall defer

1 transmittal of the information received from the court until the
2 minor is returned to public school. If the minor is returned to a
3 school district other than the one from which the minor came, the
4 parole or probation officer having jurisdiction over the minor shall
5 so notify the superintendent of the last district of attendance, who
6 shall transmit the notice received from the court to the
7 superintendent of the new district of attendance.

8 (c) Each probation report filed with the court concerning a minor
9 whose record is subject to dissemination pursuant to subdivision
10 (b) shall include on the face sheet the school at which the minor
11 is currently enrolled. The county superintendent shall provide the
12 court with a listing of all of the schools within each school district,
13 within the county, along with the name and mailing address of
14 each district superintendent.

15 (d) Each notice sent by the court pursuant to subdivision (b)
16 shall be stamped with the instruction: “Unlawful Dissemination
17 Of This Information Is A Misdemeanor.” Any information received
18 from the court shall be kept in a separate confidential file at the
19 school of attendance and shall be transferred to the minor’s
20 subsequent schools of attendance and maintained until the minor
21 graduates from high school, is released from juvenile court
22 jurisdiction, or reaches the age of 18 years, whichever occurs first.
23 After that time the confidential record shall be destroyed. At any
24 time after the date by which a record required to be destroyed by
25 this section should have been destroyed, the minor or his or her
26 parent or guardian shall have the right to make a written request
27 to the principal of the school that the minor’s school records be
28 reviewed to ensure that the record has been destroyed. Upon
29 completion of any requested review and no later than 30 days after
30 the request for the review was received, the principal or his or her
31 designee shall respond in writing to the written request and either
32 shall confirm that the record has been destroyed or, if the record
33 has not been destroyed, shall explain why destruction has not yet
34 occurred.

35 Except as provided in paragraph (2) of subdivision (b), no
36 liability shall attach to any person who transmits or fails to transmit
37 any notice or information required under subdivision (b).

38 (e) For purposes of this section, a “juvenile case file” means a
39 petition filed in any juvenile court proceeding, reports of the
40 probation officer, and all other documents filed in that case or

1 made available to the probation officer in making his or her report,
2 or to the judge, referee, or other hearing officer, and thereafter
3 retained by the probation officer, judge, referee, or other hearing
4 officer.

5 *SEC. 3. Section 10850.4 is added to the Welfare and Institutions*
6 *Code, to read:*

7 *10850.4. (a) For the purpose of this section the following*
8 *definitions shall apply:*

9 *(1) "Child abuse and neglect" means the same as defined in*
10 *Section 11165.6 of the Penal Code.*

11 *(2) "Near fatality" means a severe childhood injury or condition*
12 *caused by abuse or neglect that results in the child receiving*
13 *critical care for at least 24 hours following the child's admission*
14 *to a critical care unit.*

15 *(3) "Reasonable suspicion" means the same as defined in*
16 *Section 11166 of the Penal Code.*

17 *(4) "Substantiated report" or "substantiated" means the same*
18 *as defined in Section 11165.12 of the Penal Code.*

19 *(b) (1) Upon request, a custodian of a juvenile case file within*
20 *a county welfare department shall release a juvenile case record,*
21 *subject to the limitations set forth in subdivision (d), relating to a*
22 *substantiated case of child abuse or neglect that resulted in a*
23 *child's fatality or near fatality, whether the case was substantiated*
24 *by the county welfare department's own investigation, or that of*
25 *law enforcement, within 10 days from the request, or upon the*
26 *disposition of the investigation, whichever happens later.*

27 *(2) Prior to a county welfare department's substantiation of a*
28 *case of child abuse or neglect that resulted in a child's fatality or*
29 *near fatality, upon request, a custodian shall release information*
30 *about the juvenile case file, no later than 10 days from the request,*
31 *limited to only the following:*

32 *(A) Whether an abuse report has been made.*

33 *(B) Whether an investigation has been initiated.*

34 *(C) The results of the investigation upon completion.*

35 *(c) Upon the release of a juvenile case file by the custodian of*
36 *records, the State Department of Social Services or county welfare*
37 *department may comment on the case within the scope of the*
38 *release.*

1 (d) Any juvenile case file records released pursuant to this
2 section, shall have the following information redacted prior to
3 their release:

4 (1) The name, address, telephone number, or any other
5 identifying information of a child who is the subject of a near
6 fatality.

7 (2) The names, addresses, telephone numbers, or any other
8 identifying information of another child, caretaker, or other third
9 party who is directly or indirectly connected to the juvenile case
10 file that is the subject of the release, any personal information
11 under which there is a reasonable suspicion that the release would
12 be detrimental to the safety, protection, or physical or emotional
13 well-being of an individual, so long as that information is not
14 relevant to the circumstances of the child's fatality or near fatality.
15 Nothing in this paragraph shall be used to exclude the release of
16 nonidentifying personal information of a person involved in the
17 fatality or near fatality.

18 (3) The names, addresses, telephone numbers, or any other
19 identifying information of any individual reporting abuse or neglect
20 of a child.

21 (4) The names, addresses, telephone numbers, or any other
22 identifying information of any county or state personnel referred
23 to in the juvenile case file.

24 (5) Any information that would jeopardize a criminal
25 investigation or proceeding.

26 (e) (1) Every county welfare department shall notify the
27 department of any child fatality or near fatality that occurred
28 within its jurisdiction that was the result of child abuse or neglect.

29 (2) The department shall, after consulting with interested
30 stakeholders, provide each county with instructions, in the form
31 of an all-county letter, regarding the method of notification
32 required under paragraph (1).

33 (f) The department shall provide a summary of the information
34 provided pursuant to subdivision (e) that contains findings and
35 information about each case of child abuse or neglect that has
36 resulted in a child fatality or near fatality. The department shall
37 prepare and release to the public an annual report that identifies
38 systemic issues or patterns resulting from these cases. All
39 summaries and reports created pursuant to this subdivision shall
40 be made available to the public in an electronic format.

1 (g) *The department may adopt regulations and rules as may be*
2 *necessary to implement this section.*
3 *SEC. 4. If the Commission on State Mandates determines that*
4 *this act contains costs mandated by the state, reimbursement to*
5 *local agencies and school districts for those costs shall be made*
6 *pursuant to Part 7 (commencing with Section 17500) of Division*
7 *4 of Title 2 of the Government Code.*